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Paper No. 3

WORLDCOM, INC.
TECHNOLOGY LAW DEPARTMENT
1133 19TH STREET NW
WASHINGTON, DC 20036

COPY MAILED

JUL 31 2002

In re Application of :
Cardy, et al. :
Reissue Application No. 10/054,245 :
Filed: January 24, 2002 :
Atty. Dkt. No.: CCK94028 :
For: TELECOMMUNICATIONS SYSTEM :
HAVING SEPARATE SWITCH INTELLIGENCE :
AND SWITCH FABRIC :

OFFICE OF PETITIONS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed January 24, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks requirement (1) stated above. The petition lacks sufficient evidence that the non-signing inventors cannot be reached, were ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or declaration.

The declaration of Timothy R. DeWitt states that from on or about October, 2001 until on or about November, 2001, declarant was in contact with non-signing inventor Carol Waller with regards to drafting proposed reissue claims for the above-referenced application. Declarant further states that on October 4, 2001, declarant e-mailed to non-signing inventor Carol Waller a draft set of reissue claims. Declarant states non-signing inventor Carol Waller did not respond to the e-mail. Declarant also states that during a telephone conversation, non-signing inventor Carol Waller indicated she would review the claims.

Declarant further states that on January 16, 2002, declarant contacted non-signing inventor Ken Rambo via telephone and that non-signing inventor Ken Rambo verbally refused to join the

application due to a conflict of interest.

The declaration of Frank McKiel, Jr. states that from on or about December, 2001 until on or about January, 2002, declarant was in contact with non-signing inventor Carol Waller with regards to drafting proposed reissue claims for the above-referenced application. Declarant further states that on January 14, 2002, declarant mailed to non-signing inventor Carol Waller a copy of the revised draft reissue claims and a draft declaration. Declarant further indicates that non-signing inventor Carol Waller had not reviewed the proposed claims as of that time.

Petitioner is advised that before a refusal can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the non-signing inventor. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. See, MPEP 409.03(d).

Any renewed petition must be supported by evidence that the inventors were presented with a copy of the application papers. In particular, the renewed petition should set forth the manner in which the application papers were presented to the non-signing inventors. Petitioner may wish to provide the Office with copies of dated cover letters and, if available, copies of mailing receipts as evidence that the non-signing inventor was presented with a copy of the application papers. If, after having been presented with the application papers, an oral refusal is made by a non-signing inventor, this fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusal was made. Any written refusal to execute the oath or declaration by an inventor should likewise be submitted. Petitioner's attention is directed to MPEP 409.03(d) for further information on the presumptive evidence required for accordance of status under 37 CFR 1.47.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.


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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy